

G-010/GR-92-710 ORDER ACCEPTING AND ADOPTING SETTLEMENT AGREEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Application
of Midwest Gas, a Division of
Midwest Power Systems, Inc., for
Authority to Change Its Schedule
of Gas Rates for Retail
Customers Within the State of
Minnesota

ISSUE DATE: April 20, 1993

DOCKET NO. G-010/GR-92-710

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SETTLEMENT AGREEMENT

PROCEDURAL HISTORY

I. INITIAL COMMISSION ACTION

On August 14, 1992, Midwest Gas (Midwest or the Company), a division of Midwest Power Systems, Inc., filed a petition seeking a general rate increase of \$3,309,626, or 6.2%, effective October 13, 1992.

On September 29, 1992, the Commission issued two Orders, one accepting the filing and suspending the proposed rates, the other referring the case to the Office of Administrative Hearings for contested case proceedings. The Office of Administrative Hearings assigned the case to Administrative Law Judge (ALJ) Allen E. Giles.

On October 9, 1992, the Commission set interim rates under Minn. Stat. § 216B.16, subd. 3 (1992). Interim rates were authorized as of October 13, 1992, and were set at a level allowing an additional \$2,191,861 in annual revenues.

II. PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE

A. Prehearing Conference

The ALJ held a prehearing conference on October 12, 1992, at which he granted petitions to intervene filed by the Department of Public Service (the Department) and ENRON-Northern Natural Gas Company (Northern Natural). The ALJ also established procedural guidelines and set timetables for the case.

Appearances at the prehearing conference were made by the following: J. Christopher Cook and Steven R. Weiss, Midwest Gas, 401 Douglas Street, Box 778, Sioux City, Iowa 51102, appeared on behalf of Midwest Gas; Dennis Ahlers and Brent Vanderlinden, Special Assistant Attorneys General, 1100 Bremer Tower, 82 East 7th St., St. Paul, Minnesota 55101, appeared on behalf of the Department of Public Service; Lon Stanton, ENRON-Northern Natural Gas Company, 7901 Xerxes Ave. South, Minneapolis, Minnesota 55431, and Patrick J. Joyce, ENRON-Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103-0330, appeared on behalf of or filed a Notice of Appearance on behalf of ENRON-Northern Natural Gas Company.

The ALJ issued a Prehearing Order on October 21, 1992, and a Supplemental Prehearing Order on January 15, 1993.

B. Public Hearings

The ALJ held three public hearings to receive comments and questions from non-intervening ratepayers. The first hearing was held in Milaca, Minnesota, on January 5, 1993; the second two hearings were held in Coon Rapids, Minnesota, in the afternoon and evening of January 6, 1993. Only one member of the public spoke at the hearings. This individual stated that his gas bills had risen substantially in the past few years, that the rate increase requested by the Company would burden ratepayers on fixed incomes, and that the Department's recommendations would be more acceptable.

C. Settlement Agreement; Evidentiary Hearing

Before evidentiary hearings began, the parties entered into a Settlement Agreement intended to resolve all issues in the case. The Settlement Agreement, which was submitted to the ALJ, set forth the parties' resolution of previously contested issues and outlined the record evidence supporting their resolution of each issue. Northern Natural neither joined in the Settlement Agreement nor expressed opposition to it.

On February 10, 1993, the ALJ convened an evidentiary hearing for the purpose of further developing a record regarding the Settlement Agreement.

On February 18, 1993, the ALJ issued an Order certifying the Settlement Agreement, files and record in the proceeding to the Commission.

III. PROCEEDINGS BEFORE THE COMMISSION

The matter came before the Commission for consideration on March 26, 1993. The parties to the Settlement Agreement spoke in support of its acceptance by the Commission.

Upon review of the entire record of this proceeding, the Commission makes the following Findings, Conclusions, and Order.

FINDINGS AND CONCLUSIONS

IV. JURISDICTION

The Commission has general jurisdiction over the Company under Minn. Stat. §§ 216B.01 and 216B.02 (1992). The Commission has general jurisdiction over rate changes under Minn. Stat. § 216B.16 (1992). The Commission has authority under Minn. Stat. § 216B.16, subd. 1(a) (1992) to accept the settlement of a rate case on finding that the terms of the settlement are in the public interest and are supported by substantial evidence.

The matter was properly referred to the Office of Administrative Hearings under Minn. Stat. §§ 14.57-14.62 (1992) and Minn. Rules, parts 1400.0200 et seq.

V. FURTHER ADMINISTRATIVE REVIEW

Under Minn. Rules, part 7830.4100, any petition for rehearing, reconsideration, or other post-decision relief must be filed within 20 days of the date of this Order. Such a petition must be filed with the Executive Secretary of the Commission, must specifically set forth the grounds relied upon and errors claimed, and must be served on all parties. The filing should include an original, 13 copies, and proof of service on all parties.

Adverse parties have ten days from the date of service of the petition to file answers. Answers must be filed with the Executive Secretary of the Commission and must include an original, 13 copies, and proof of service on all parties. Replies are not permitted.

The Commission, in its discretion, may grant oral argument on the petition or decide the petition without oral argument.

Under Minn. Stat. § 216B.27, subd. 3 (1992), no Order of the Commission shall become effective while a petition for rehearing is pending or until either of the following: ten days after the petition for rehearing is denied; or ten days after the Commission has announced its final determination on rehearing, unless the Commission otherwise orders.

Any petition for rehearing not granted within 20 days of filing is deemed denied. Minn. Stat. § 216B.27, subd. 4 (1992).

VI. MIDWEST GAS

Midwest Gas is an operating division of Midwest Power Systems, Inc., a natural gas and electric utility based in Iowa. Midwest Power Systems, Inc. is a wholly-owned subsidiary of Midwest Resources, an investor-owned holding company.

Midwest Gas is a retail distributor of natural gas and related transportation services operating in Iowa, Minnesota, Nebraska, and South Dakota. This rate case involves only Midwest's gas operations in the state of Minnesota.

In 1992, Midwest Gas served 40 Minnesota communities and 74,000 Minnesota customers with approximately 11.8 billion cubic feet of natural gas. These customers were served through approximately 1,600 miles of gas distribution pipe and 1,200 miles of service pipe.

VII. THE STIPULATION AND OFFER OF SETTLEMENT

Midwest's original proposal included a revenue deficiency of \$3,309,625. As a result of the negotiation process, the parties' eventual Settlement Agreement included a revenue requirement of \$2,033,110. The final proposed revenue requirement reflected agreed upon adjustments to rate base, income statement, rate of return/capital structure, and rate design. Some of the most significant issues in the Settlement Agreement are discussed below.

A. Rate Base

Midwest proposed a rate base of \$46,983,684 for the 1992 test year. The parties eventually agreed to adjustments which reduced the rate base to \$45,240,178.

Midwest originally proposed treating test year plant-in-service additions as if they were added in total at the beginning of the year. The Department proposed a test year rate base using projected average plant-in-service. The parties eventually agreed that since the Company used projected year-end numbers of customers to calculate revenues, it would be appropriate to match that with year-end plant-in-service, as proposed by Midwest.

Midwest proposed an adjustment to accumulated deferred income taxes to reflect an error made at the time it sold stock in 1989. The proposed reduction of deferred income taxes by \$949,618 would increase rate base by the same amount. The Department argued that if the Commission and other parties had been aware of the error at the time of Midwest's last rate case, Midwest would have been allowed less acquisition adjustment (and therefore a lower rate base). The Department therefore recommended a downward adjustment to the acquisition adjustment of \$949,618. In the

Settlement Agreement, Midwest maintained that there is no direct connection between the deferred income tax adjustment and the acquisition adjustment. Nevertheless, Midwest agreed to the reduction of the acquisition adjustment by \$949,618, the same amount by which deferred income taxes were reduced.

B. Income Statement

The Company proposed operating income for the 1992 test year of \$2,969,195, based on test year revenues of \$53,209,626 and expenses of \$50,240,431. The parties' negotiations resulted in an increase of \$261,270 to operating income.

Adjustments to reflect Statement of Financial Accounting Standard (SFAS) 106 changes in the accounting treatment of other post-employment benefits (OPEB) costs were decided for the first time for Midwest in this rate case. The parties agreed that only 50% of the transition obligation would be reflected in rates, and that the Company would recover 100% of the service and interest cost in rates.

In Midwest's rate case expense proposal, the Company started with the actual rate case expenses incurred for its last rate case, then adjusted upward for inflation and increased expenses. The Company also proposed recovery of the third and last year of amortized rate case expenses from its last rate case. The Department proposed disallowing the remaining unamortized expenses, and a substantial reduction to current rate case expenses. The parties eventually agreed to disallow the third year of prior rate case expenses, and to allow the level of actual rate case expenses from the last rate case, plus an inflation factor, with increased expenses limited to the Company's SFAS 106 witness.

Since Midwest's last rate case, Iowa Public Service (Midwest's former parent company) has merged with Iowa Power Inc. to become Midwest Power Systems, Inc., Midwest's present parent company. There was also a merger of the respective holding companies. Midwest originally proposed a 50%/50% sharing of the net merger savings between ratepayers and shareholders. In the Settlement Agreement, the parties agreed to drop the shared savings approach and to flow the entire test year savings to ratepayers. The parties also agreed to limit recovery of merger costs to those incurred in the test year.

C. Rate of Return/Capital Structure

Since Midwest is a division of Midwest Power Systems, Inc. (MPSI), Midwest does not have its own capital structure. The Company proposed using MPSI's capital structure in this rate case. This proposal, as well as the Company's proposed cost of debt and cost of preferred stock, were agreed to by the parties in the Settlement Agreement.

Midwest proposed a 13.00% cost of common equity. The parties eventually agreed to the Department's proposed cost of equity of 11.50%. This resulted in a 9.816% weighted cost of capital.

D. Rate Design

The Company proposed consolidation of the rate schedules for customers served off the Northern and Viking interstate pipeline systems. According to the Department, the two distribution systems operate separately during peak periods. The Department therefore reasoned that improper cost allocation would occur if the systems were consolidated in the rate case. In the Settlement Agreement, the parties agreed that Midwest will not consolidate its gas costs at this time.

VIII. COMMISSION ACCEPTANCE AND ADOPTION OF THE SETTLEMENT AGREEMENT

Minn. Stat. § 216B.16, subd. 1(a) provides a process for the formulation and consideration of settlement agreements in rate case proceedings. The statute directs the Office of Administrative Hearings to convene a settlement conference, including all parties to the proceeding, for the purpose of encouraging settlement of any or all issues. If a settlement is reached, the agreement must be submitted to the Commission for its approval or rejection. This statutory formula has been followed by the parties, and the process and results are now before the Commission for consideration.

The ALJ assigned to this case convened a settlement conference, at which parties were encouraged to narrow the scope of contested issues where possible. Following the settlement conference, the parties filed a Settlement Agreement intended to resolve all contested issues. For each essential term of the Agreement, the parties inserted references to filed evidentiary support.

The ALJ then convened a hearing for the purpose of developing a more complete record regarding the Settlement Agreement. The hearing gave the parties the opportunity to clarify the terms of the Settlement Agreement, and to explain their meaning and effect. Following the evidentiary hearing, the ALJ certified the Settlement Agreement to the Commission in its entirety, without reservation or qualification.

Following the process set out in Minn. Stat. § 216B.16, subd. 1(a), the Commission analyzed the certified Settlement Agreement to determine if its terms are supported by substantial evidence and are in the public interest. The Commission finds that each essential element of the Settlement Agreement is fully supported by documentation and the parties' testimony in the record. The Commission also finds that the terms of the Stipulation are within the bounds of reasonableness and Commission precedent, and

will result in just and reasonable rates. The Settlement will allow Midwest investors the opportunity to earn a fair and reasonable return on their investment.

The Commission has closely scrutinized the proposed Settlement Agreement, the process in which it arose, and the full record of the proceeding. The Commission finds that the terms of the Settlement Agreement are within the bounds of acceptable regulatory practice, fully supported by the evidence, and in the public interest. The Commission will accept and adopt the Settlement Agreement.

The Commission notes that any Settlement Agreement arises from a process of negotiation within a unique set of facts. Acceptance of the Settlement Agreement is not meant to establish precedent for future Commission decisions. As the parties themselves stated at p. 18 of their Settlement Agreement:

This Settlement Agreement is a negotiated agreement, arrived at between the parties for the purpose of resolving the contested revenue requirement and rate design matters in this proceeding in an equitable fashion, consistent with the public interest. As a result, the parties agreed that the resolution of the contested issues made in this Settlement Agreement establish no precedent for resolution of these issues in the future.

IX. ADDITION OF TARIFF LANGUAGE RELATED TO TEMPORARY DISCONNECTION OF SERVICE

In response to inquiries from Commission Staff, the Company provided draft language to be added to the "Disconnection of Gas Service" section of its tariff sheets. This tariff addition was not part of the Settlement Agreement but was admitted into evidence as Midwest Exhibit 1. Although the language did not resolve all concerns regarding the Company's disconnection policies, the Department indicated it would not oppose the tariff addition.

The Commission will accept the additional tariff language. The Commission expects that the Company will continue to work with the Department and Commission Staff to improve upon the tariff language if necessary.

ORDER

1. The Commission accepts and adopts the Settlement Agreement filed February 1, 1993. That document is attached to and incorporated into this Order as Attachment A.

2. The Commission accepts the Company's proposed "Disconnection of Gas Service" tariff language. A copy of that tariff addition is attached to this Order as Attachment B.
3. Within 30 days of the date of this Order, the Company shall file with the Commission for its review and approval, and serve on all parties to this proceeding, revised schedules of rates and charges reflecting the revenue requirement and rate design decisions herein, as well as proposed customer notices explaining the final rates.
4. Within 30 days of the date of this Order, the Company shall file with the Commission for its review and approval, and serve on all parties to this proceeding, a proposed plan for refunding with interest the amount by which interim rate revenues exceeded final rate revenues approved herein.
5. Parties who wish to file comments regarding the above compliance filings may do so within 15 days of their filing.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)